

1 **UNDERTAKING J11.8**

2
3 **Undertaking**

4
5 To calculate what portion of the \$624M is for the prescribed facilities non-Bruce facilities.

6
7 **Response**

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9 As part of the line of questioning leading up to this undertaking, AMPCO's counsel
10 suggested that whether the amount reported by OPG in its audited consolidated financial
11 statements as Due to the Province of Ontario (the "Province") with respect to the
12 Decommissioning Segregated Fund is available to OPG is a matter of argument based
13 on the interpretation of the Ontario Nuclear Funds Agreement ("ONFA") found at Ex.
14 K11.4. In that context, while providing the requested information on a hypothetical basis,
15 this response also explains that the premise of the request is unequivocally contrary to
16 the provisions of the ONFA. In accordance with these provisions, OPG does not have
17 the right or access to the Due to the Province amount, which accrues to the benefit of
18 the Province and, in accordance with generally accepted accounting principles, is
19 treated as such in OPG's financial statements.

20
21 Specifically, sections 2.2, 4.7.3 and 8.2 of the ONFA address the incorrect premise of
22 the undertaking. First, section 2.2 restricts access to and use of the nuclear segregated
23 funds to circumstances required or permitted by the ONFA, as follows:

24 *"The assets of the Segregated Funds may not be held, used, paid, distributed,*
25 *Disbursed, managed, encumbered in any way or transferred except as required*
26 *or expressly permitted by the terms of this Agreement..."*

27
28 Second, section 4.7.3 of the ONFA stipulates that, only in circumstances where the
29 market value of the Decommissioning Segregated Fund is more than 120% of the
30 Decommissioning Balance to Complete Cost Estimate, OPG has the right to direct 50%
31 of the amount in excess of the 120% of the Decommissioning Balance to Complete Cost
32 Estimate to be transferred to the Used Fuel Segregated Fund.¹ As noted by the OPG
33 witness at the Technical Conference (Tr. Vol. 2, p. 158, lines 6-17), this is also
34 described in OPG's audited consolidated financial statements (for example, Ex. L-2.1-6
35 ED-003, Att. 1, p. 36 of the financial statements). The OPG witness also stated at Tr.
36 Vol. 11 (redacted version), p. 110 lines 16-20 that the 120% threshold is not expected to
37 be reached during the test period.

38
39 Finally, section 8.2 of the ONFA stipulates that, upon termination of the ONFA, the
40 Province "shall then have the right to requisition a Disbursement to it and/or to OEFC (as
41 the Province may determine)" for the amount by which the market value of the

¹ Section 4.7.3 refers to the term Surplus. At paragraph 1.117 of the ONFA, Surplus is specifically defined as the amount by which the market value of the Decommissioning Segregated Fund exceeds 120% of the Decommissioning Balance to Complete Cost Estimate.

1 Decommissioning Segregated Fund exceeds the Decommissioning Balance to
2 Complete Cost Estimate.²

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4 Based on the above provisions, unless the Decommissioning Segregated Fund is more
5 than 120% overfunded, at no point does OPG have the right or access to the amount by
6 which the market value of the Decommissioning Segregated Fund exceeds the
7 Decommissioning Balance to Complete Cost Estimate. As such, any attribution of the
8 Due to the Province amount to the prescribed facilities is purely hypothetical.

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10 Using the methodology for attributing nuclear segregated funds to the prescribed and
11 Bruce facilities as outlined in Ex. G2-2-1, section 5.4, approximately \$331M of the total
12 amount of \$624M reported as Due to the Province in OPG's 2013 audited consolidated
13 financial statements (Ex. L-2.1-6 ED-003, Att. 1) with respect to the Decommissioning
14 Segregated Fund as at December 31, 2013 is hypothetically attributable to the
15 prescribed facilities and \$293M is hypothetically attributable is to the Bruce facilities.

² Section 8.1 of the ONFA stipulates that the agreement may be terminated only at the earlier of: a written agreement of both OPG and the Province to this effect; or when substantially all of the costs for the nuclear waste management and decommissioning programs covered by the ONFA have been discharged.